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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
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16 **Antonio Fernandez,**
17 Plaintiff,
18
19 v.
20
21 **Saman Inc.**, a California
22 Corporation;
23 **Fariba Javaherian**
24 Defendants.
25

26 **Case No.**

27
28 **Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

18 Plaintiff Antonio Fernandez complains of Saman Inc., a California
19 Corporation; Fariba Javaherian; and alleges as follows:
20
21

22 **PARTIES:**

- 23 1. Plaintiff is a California resident with physical disabilities. He is
24 paralyzed from the waist down and uses a wheelchair for mobility.
25 2. Defendant Saman Inc. owned the real property located at or about 939
San Gabriel Blvd., Rosemead, California, in July 2021.
26 3. Defendant Saman Inc. owns the real property located at or about 939
San Gabriel Blvd., Rosemead, California, currently.
27 4. Defendant Fariba Javaherian owned Mobil located at or about 939 San

1 Gabriel Blvd., Rosemead, California, in July 2021.

2 5. Defendant Fariba Javaherian owns Mobil (“Gas Station”) located at or
3 about 939 San Gabriel Blvd., Rosemead, California, currently.

4 6. Plaintiff does not know the true names of Defendants, their business
5 capacities, their ownership connection to the property and business, or their
6 relative responsibilities in causing the access violations herein complained of,
7 and alleges a joint venture and common enterprise by all such Defendants.
8 Plaintiff is informed and believes that each of the Defendants herein is
9 responsible in some capacity for the events herein alleged, or is a necessary
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
11 the true names, capacities, connections, and responsibilities of the Defendants
12 are ascertained.

13

JURISDICTION & VENUE:

14 7. The Court has subject matter jurisdiction over the action pursuant to 28
15 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
16 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

17 8. Pursuant to supplemental jurisdiction, an attendant and related cause
18 of action, arising from the same nucleus of operative facts and arising out of
19 the same transactions, is also brought under California’s Unruh Civil Rights
20 Act, which act expressly incorporates the Americans with Disabilities Act.

21 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
22 founded on the fact that the real property which is the subject of this action is
23 located in this district and that Plaintiff's cause of action arose in this district.

24

FACTUAL ALLEGATIONS:

25 10. Plaintiff went to the Gas Station in July 2021 with the intention to avail
26 himself of its goods or services motivated in part to determine if the

1 defendants comply with the disability access laws.

2 11. The Gas Station is a facility open to the public, a place of public
3 accommodation, and a business establishment.

4 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
5 to provide wheelchair accessible paths of travel in conformance with the ADA
6 Standards as it relates to wheelchair users like the plaintiff.

7 13. The Gas Station provides paths of travel to its customers but fails to
8 provide wheelchair accessible paths of travel in conformance with the ADA
9 Standards.

10 14. A problem that plaintiff encountered was that some of the shopping
11 aisles inside the Gas Station store had less than 36 inches of clear width space.

12 15. Plaintiff believes that there are other features of the paths of travel that
13 likely fail to comply with the ADA Standards and seeks to have fully compliant
14 paths of travel for wheelchair users.

15 16. On information and belief, the defendants currently fail to provide
16 wheelchair accessible paths of travel.

17 17. Additionally, on the date of the plaintiff's visit, the defendants failed to
18 provide wheelchair accessible sales counters in conformance with the ADA
19 Standards as it relates to wheelchair users like the plaintiff.

20 18. The Gas Station provides sales counters to its customers but fails to
21 provide wheelchair accessible sales counters in conformance with the ADA
22 Standards.

23 19. One problem that plaintiff encountered was that the sales counter in the
24 Gas Station store was 42 inches high. There was no counter that was 36 inches
25 or less in height that plaintiff could use for his transactions.

26 20. Plaintiff believes that there are other features of the sales counters that
27 likely fail to comply with the ADA Standards and seeks to have fully compliant
28 sales counters for wheelchair users.

1 21. On information and belief, the defendants currently fail to provide
2 wheelchair accessible sales counters.

3 22. The failure to provide accessible facilities created difficulty and
4 discomfort for the Plaintiff.

5 23. These barriers relate to and impact the plaintiff's disability. Plaintiff
6 personally encountered these barriers.

7 24. As a wheelchair user, the plaintiff benefits from and is entitled to use
8 wheelchair accessible facilities. By failing to provide accessible facilities, the
9 defendants denied the plaintiff full and equal access.

10 25. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 26. The barriers identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the
15 Department of Justice as presumably readily achievable to remove and, in fact,
16 these barriers are readily achievable to remove. Moreover, there are numerous
17 alternative accommodations that could be made to provide a greater level of
18 access if complete removal were not achievable.

19 27. Plaintiff will return to the Gas Station to avail himself of its goods or
20 services and to determine compliance with the disability access laws once it is
21 represented to him that the Gas Station and its facilities are accessible.
22 Plaintiff is currently deterred from doing so because of his knowledge of the
23 existing barriers and his uncertainty about the existence of yet other barriers
24 on the site. If the barriers are not removed, the plaintiff will face unlawful and
25 discriminatory barriers again.

26 28. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this
 2 lawsuit, once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to his
 6 disability removed regardless of whether he personally encountered them).

7

**8 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 9 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 15 privileges, advantages, accommodations, facilities, goods and services of any
 16 place of public accommodation is offered on a full and equal basis by anyone
 17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 18 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
 20 or procedures, when such modifications are necessary to afford
 21 goods, services, facilities, privileges, advantages, or
 22 accommodations to individuals with disabilities, unless the
 23 accommodation would work a fundamental alteration of those
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 27 defined by reference to the ADA Standards.
- 28 c. A failure to make alterations in such a manner that, to the

maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

31. When a business provides paths of travel, it must provide accessible paths of travel.

32. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

33. When a business provides sales counters, it must provide accessible sales counters.

34. Here, accessible sales counters have not been provided in conformance with the ADA Standards.

35. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

36. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

37. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

38. Plaintiff repleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
3 that persons with disabilities are entitled to full and equal accommodations,
4 advantages, facilities, privileges, or services in all business establishment of
5 every kind whatsoever within the jurisdiction of the State of California. Cal.
6 Civ. Code §51(b).

7 39. The Unruh Act provides that a violation of the ADA is a violation of the
8 Unruh Act. Cal. Civ. Code, § 51(f).

9 40. Defendants’ acts and omissions, as herein alleged, have violated the
10 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
11 rights to full and equal use of the accommodations, advantages, facilities,
12 privileges, or services offered.

13 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
14 discomfort or embarrassment for the plaintiff, the defendants are also each
15 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
16 (c).)

17

18 **PRAYER:**

19 Wherefore, Plaintiff prays that this Court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling Defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. For equitable nominal damages for violation of the ADA. See
26 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
27 and any other equitable relief the Court sees fit to grant.

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1 3. Damages under the Unruh Civil Rights Act, which provides for actual
2 damages and a statutory minimum of \$4,000 for each offense.

3 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
4 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

5 Dated: March 29, 2022

6 CENTER FOR DISABILITY ACCESS

7 By: 

8 Amanda Seabock, Esq.
9 Attorney for plaintiff